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PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/931,896
Filing Date: August 20, 2001
Appellant(s): LESSARD ET AL.

Robert Brouillette
Reg. No. 31,930
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 27, 2007 appealing from the Office action mailed June 14, 2007.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|---------|---------|
| 6,199,045 | Giniger | 03-2001 |
| 5,938,721 | Dussell | 08-1999 |
| 5,926,116 | Kitano | 07-1999 |
| 5,825,283 | Camhi | 10-1998 |

(9) Ground(s) of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4, 6, 9, 12-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger et al. (hereinafter "Giniger", US Patent No 6,199,045 B1) in view of Dussell et al. (hereinafter "Dussell", US Patent 5,938,721).

As per claim 1, Giniger discloses a system for the creation and management of location bookmarks, each of said location bookmarks relating to a location, said system comprising:

a) a data server comprising;

- i) processor means for processing data (column 5, lines 64-67, column 6, lines 1-5, column 8, lines 41-47);
- ii) means for encoding data elements relating to said location (column 7, lines 10-12, column 11, lines 35-38, column 12, lines 20-23);
- iii) means for storing said data elements on a storage medium (column 11, lines 38-39, column 12, lines 25-26, 34-35);
- iv) means for selectively accessing said data (column 6, lines 1-5, column 8, lines 61-64, column 12, lines 33-37);
- v) data transceiver means (column 6, lines 5-7, column 8, lines 64-65, column 11, lines 59-61, column 12, lines 43-45, column 13, lines 18-19);

b) at least one user device comprising:

- i) means for determining the position of said location (column 5, lines 48-55, column 8, lines 23-25, 54-57);
- iii) data transceiver means (column 12, lines 20-23, column 13, lines 31-33, column 18, lines 21-23);

c) A data communication network adapted to connect said user device to said data

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server (column 5, lines 50-61, column 8, lines 15-34).

Giniger does not explicitly disclose:

- ii) means for creating said data elements relating to said location.

However, in an analogous art, Dussell discloses a mobile device enabling geographic coordinates of a first location to be associated with a descriptor such as a task descriptor (text and/or voice message). The descriptor is associated with a location reference such as geographic coordinates or geocode (column 7, lines 22-30, column 8, lines 27-40).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Dussell's means for creating data elements relating to location in Giniger's system enabling users to accomplish a task.

As per claim 2, Giniger does not explicitly disclose in which the data elements are adapted to contain data representations of:

- a) the geographical position of the location;
- b) a user-created identifier associated with the location.

However, in an analogous art, Dussell discloses a device having GPS location means and is able to take a record of current location information. The information describes the physical location of the user and device. The user can also set specific alarm

events for each location causing an output signal to be generated when the device returns to a particular location (column 7, lines 33-40, column 8, lines 13-25, 31-44).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Dussell's data elements representing the geographical position and a user-created identifier associated with the location in Giniger's system enabling information to be displayed as highlighted markers on a map.

As per claim 4, Giniger does not explicitly disclose a system as claimed in claim 2 wherein said identifier is one or more of the following:

- a) a text;
- b) a video recording;
- c) an audio recording;
- d) an image.

However, in an analogous art, Dussell discloses a device having GPS location means and is able to take a record of current location information. The information describes the physical location of the user and device. The user can also set specific alarm events for each location causing an output signal to be generated when the device returns to a particular location. This alarm event can be text and/or voice message (column 7, lines 24-26).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Russell's identifier is one or

more of text, video recording, audio recording, and image in Giniger's system enabling the user to associate text strings with locations.

As per claim 6, Giniger does not explicitly disclose a system as claimed in claim 4 further comprising data elements which are adapted to contain data representations of the identification of the author of the bookmark.

However, in an analogous art, Dussell discloses providing location information to describe the physical location of the user and device. The user can also set specific alarm events for each location causing an output signal to be generated when the device returns to a particular location. This alarm event can be text and/or voice message (column 7, lines 24-26).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Russell's data elements which are adapted to contain data representations of the identification of the author of the bookmark in Giniger's system enabling the user to associate text strings with locations.

As per claim 9, Giniger does not explicitly disclose in which the data elements are adapted to contain data representations of:

- a) the geographical position of the location;
- b) an identifier associated with the location.

However, in an analogous art, Dussell discloses a device having GPS location means and is able to take a record of current location information. The information describes

the physical location of the user and device. The user can also set specific alarm events for each location causing an output signal to be generated when the device returns to a particular location (column 7, lines 33-40, column 8, lines 13-25, 31-44).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Russell's data elements representing the geographical position and an identifier associated with the location in Giniger's system enabling information to be displayed as highlighted markers on a map.

As per claim 12, Giniger discloses a method allowing an end user to create and store information concerning a location, said method using a system comprising a data server, at least a user device and a data communication network, said method comprising the steps of:

- a) determining the geographical position of the location using said user device (column 5, lines 12-15, 49-67, column 7, lines 6-8, column 8, lines 15-21, 45-51);
- b) identifying or creating additional data associated to said location (column 6, lines 1-5, column 8, lines 61-64, column 12, lines 33-37);
- d) transmitting said record from said user device to said data server using said data communication network (column 12, lines 20-23, column 13, lines 31-33, column 18, lines 21-23);
- e) storing said record in said data server (column 11, lines 38-39, column 12, lines 25-26, 34-35).

Giniger does not explicitly disclose:

c) creating a record comprising said position and said additional data elements using said user device.

However, in an analogous art, Dussell discloses a mobile device enabling geographic coordinates of a first location to be associated with a descriptor such as a task descriptor (text and/or voice message). The descriptor is associated with a location reference such as geographic coordinates or geocode (column 7, lines 22-30, column 8, lines 27-40).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Dussell's means for creating data elements relating to location in Giniger's system enabling users to accomplish a task.

As per claim 13, Giniger discloses a method as claimed in claim 12 wherein the said record is created by the user of a wireless device (column 8, lines 15-34).

As per claim 14, Giniger discloses a method as described in claim 12 wherein said record is created by the user of a wired device (column 8, lines 15-34).

As per claim 15, Giniger discloses a method as claimed in claim 13 wherein said wireless device is a cellular telephone (column 8, lines 15-34).

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As per claim 16, Giniger discloses a method as claimed in claim 12 wherein said record is created by the user of a browser based light client (column 8, lines 15-34).

As per claim 17, Giniger discloses a method allowing an end user to create and store information concerning a location, said method using a system comprising a data server, at least a user device and a data communication network, said method comprising the steps of:

- a) determining the geographical coordinates of the location using said user device;
- c) transmitting said geographical coordinates and said additional data elements from said user device to said data server using said data communication network (column 12, lines 20-23, column 13, lines 31-33, column 18, lines 21-23);
- d) storing said coordinates and said additional data elements in said data server (column 7, lines 6-12, column 11, lines 38-39, column 12, lines 25-26, 34-35).

Giniger does not explicitly disclose:

- b) identifying or creating additional data elements associated to said location using said user device;

However, in an analogous art, Dussell discloses a mobile device enabling geographic coordinates of a first location to be associated with a descriptor such as a task descriptor (text and/or voice message). The descriptor is associated with a location reference such as geographic coordinates or geocode (column 7, lines 22-30, column 8, lines 27-40).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Dussell's means for creating data elements relating to location in Giniger's system enabling users to accomplish a task.

As per claim 18, Giniger discloses a method as in claimed 12 wherein said coordinates are determined with the use of a GPS device (column 7, lines 6-12, 20-25, 45-53).

As per claim 19, Giniger discloses a method as claimed in claimed 17 wherein said coordinates are determined with the use of a GPS device (column 9, lines 49-60).

As per claim 20, Giniger discloses a method as claimed in claim 19 wherein said GPS device is integrated to a wireless communication device (column 9, lines 19-25, 49-55).

As per claim 21, Giniger discloses a method as claimed in claim 20 wherein said wireless communication device is a cellular telephone (column 8, lines 15-34).

As per claim 22, Giniger discloses a method allowing an end user to a record created pursuant to the method claimed in claim 12, comprising the steps of:

- a) accessing said data server using said data communication network using a wireless device (column 5, lines 50-61, column 8, lines 15-34);
- b) selecting said record said data server (column 11, lines 38-39, column 12, lines 25-26, 34-35);
- c) communicating said record over said data communication network to the user of said wireless device (column 6, lines 5-7, column 8, lines 64-65, column 11, lines 59-61, column 12, lines 43-45, column 13, lines 18-19).

As per claim 23, Giniger discloses a method as claimed in claim 12, wherein the system further comprising a second user device, said method further allowing an end user to share said information concerning a location with a second end user, said method further comprising the step of transmitting said record from said first user device to said second user device using said data communication network (column 7, lines 15-27)

As per claim 24, Giniger discloses a method as claimed in claim 17, wherein the system further comprises a second user device, said method further allowing an end user to share said information concerning a location with a second end user, said method further comprising the step of transmitting said record from said first user device to said second user device using said data communication network (column 7, lines 15-27).

As per claim 25, Giniger discloses a system for the creation and management of location bookmarks relating to a location, said bookmark comprising geographical data elements and personalized data elements, said system comprising:

a) a data server comprising:

- i) processor means for processing data (column 5, lines 64-67, column 6, lines 1-5, column 8, lines 41-47);
- ii) means for encoding said geographical data elements and said personalized data elements relating to said location (column 7, lines 10-12, column 11, lines 35-38, column 12, lines 20-23);
- iii) means for storing said geographical data elements and said personalized data elements on a storage medium (column 11, lines 38-39, column 12, lines 25-26, 34-35);
- iv) means for selectively accessing said geographical data elements and said personalized data elements (column 6, lines 1-5, column 8, lines 61-64, column 12, lines 33-37);
- v) first data transceiver means (column 6, lines 5-7, column 8, lines 64-65, column 11, lines 59-61, column 12, lines 43-45, column 13, lines 18-19);

b) at least one user device comprising:

- i) means for determining the position of said location (column 5, lines 48-55, column 8, lines 23-25, 54-57);

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iii) display means for displaying said geographical data elements and/or said personalized data elements ();

iv) second data transceiver means (column 12, lines 20-23, column 13, lines 31-33, column 18, lines 21-23);

c) a data communication network adapted to connect said user device to said data server via said first data transceiver means and second data transceiver means; whereby said at least one remote user device is adapted to transmit said geographical data elements and said personalized data elements to said data server, via said data communication network, in order for said geographical data elements and said personalized data elements to be encoded by said encoding means and stored on said storage medium by said storing means and whereby said at least one remote user device is adapted to retrieve said geographical data elements and said personalized data elements from said server, via said data communication network, in order for said geographical data elements and/or said personalized data elements to be displayed on said display means (column 5, lines 50-61, column 8, lines 15-34).

Giniger does not explicitly disclose:

ii) means for creating said personalized data elements data elements relating to said location, said personalized data elements being created by a user of said user device.

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However, Dussell discloses a mobile device enabling geographic coordinates of a first location to be associated with a descriptor such as a task descriptor (text and/or voice message). The descriptor is associated with a location reference such as geographic coordinates or geocode (column 7, lines 22-30, column 8, lines 27-40).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Dussell's means for creating data elements relating to location in Giniger's system enabling users to accomplish a task.

As per claim 26, Giniger discloses a method for allowing an end user to create and store information concerning a location, said method using a system comprising a data server, at least one user device and a data communication network, said method comprising the steps of:

- a) determining the geographical position of said location using said user device (column 5, lines 12-15, 49-67, column 7, lines 6-8, column 8, lines 15-21, 45-51);
- d) transmitting said record from said user device to said data server using said data communication network (column 12, lines 20-23, column 13, lines 31-33, column 18, lines 21-23);
- e) encoding said record with said data server (column 7, lines 10-12, column 11, lines 35-38, column 12, lines 20-23);
- f) storing said encoded record in said data server (column 11, lines 38-39, column 12, lines 25-26, 34-35).

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Giniger does not explicitly disclose:

- b) creating personalized data elements associated to said location;
- c) creating a record comprising said geographical position and said personalized data elements using said user device.

However, in an analogous art, Dussell discloses a mobile device enabling geographic coordinates of a first location to be associated with a descriptor such as a task descriptor (text and/or voice message). The descriptor is associated with a location reference such as geographic coordinates or geocode (column 7, lines 22-30, column 8, lines 27-40).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Dussell's means for creating data elements relating to location in Giniger's system enabling users to accomplish a task.

3. Claims 3, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger et al. (hereinafter "Giniger", US Patent No 6,199,045 B1) in view of Dussell et al. (hereinafter "Dussell", US Patent 5,938,721) and in further view of Kitano et al. (hereinafter "Kitano", US Patent No 5,926,116).

As per claim 3, Giniger, in view of Dussell, discloses a system as claimed in claim 2.

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Giniger, in view of Dussell, does not explicitly disclose the system in which the geographical position data elements comprise:

- a) the latitude associated with the location;
- b) the longitude associated with the location.

However, in analogous art, Kitano discloses a GPS detection means that detects current position such as a latitude and a longitude at which the portable terminal is positioned (column 4, lines 1-5, 57-60, column 5, lines 31-54).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate associating latitude and longitude with the location in Giniger in order for a terminal's position to be retrieved.

As per claim 10, Giniger, in view of Dussell, discloses a virtual bookmark as claimed in claim 9.

Giniger, in view of Dussell, does not explicitly disclose the system wherein the geographical position data elements comprise:

- a) the latitude associated with the location; and
- b) the longitude associated with the location.

However, in analogous art, Kitano discloses a GPS detection means that detects current position such as a latitude and a longitude at which the portable terminal is positioned (column 4, lines 1-5, 57-60, column 5, lines 31-54).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate associating latitude and longitude with the location in Giniger in order for a terminal's position to be retrieved.

4. Claims 5, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger et al. (hereinafter "Giniger", US Patent No 6,199,045 B1) in view of Dussell et al. (hereinafter "Dussell", US Patent 5,938,721) in further view of Kitano et al. (hereinafter "Kitano", US Patent No 5,926,116) and in further view of Camhi (US Patent No 5,825,283).

As per claim 5, Giniger discloses a system as claimed in claim 3. Giniger does not explicitly disclose the system comprising data elements which are adapted to contain data representations of the altitude associated with the location. However, Camhi discloses a tracking device that utilizes satellites of the Global Positioning System to provide location information such as latitude, longitude, and altitude (column 2, lines 63-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate associating altitude with the location in Giniger in order for automobile to be tracked.

As per claim 11, Giniger discloses a virtual location bookmark as claimed in claim 10.

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Giniger does not explicitly disclose the system further comprising the altitude associated with the location.

However, Camhi discloses a tracking device that utilizes satellites of the Global Positioning System to provide location information such as latitude, longitude, and altitude (column 2, lines 63-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate associating altitude with the location in Giniger in order for automobile to be tracked.

5. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger et al. (hereinafter "Giniger", US Patent No 6,199,045 B1) in view of Dussell et al. (hereinafter "Dussell", US Patent 5,938,721) and in further view of Camhi (US Patent No 5,825,283).

As per claim 7, Giniger, in view of Dussell, discloses a system as claimed in claim 6.

Giniger, in view of Dussell, does not explicitly disclose the system further comprising data elements which are adapted to contain data representations of the accuracy of the data representations of the latitude, the longitude and the altitude.

However, Camhi discloses a tracking device that utilizes satellites of the Global Positioning System to provide location information such as latitude, longitude, and altitude (column 2, lines 63-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate associating altitude with the location in Giniger in order for automobile to be tracked.

As per claim 8, Giniger, in view of Dussell, discloses a system as claimed in claim 1 in which the data elements are adapted to contain data representations of:

c) an identifier associated with the location.

Giniger, in view of Dussell, does not explicitly disclose in which the data elements are adapted to contain data representations of:

a) the latitude associated with the location;

b) the longitude associated with the location;

d) the altitude associated with the location.

However, Camhi discloses a tracking device that utilizes satellites of the Global Positioning System to provide location information such as latitude, longitude, and altitude (column 2, lines 63-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate associating altitude with the location in Giniger in order for automobile to be tracked.

(10) Response to Argument(s)

Appellants argued in substance that:

(a) In the system of Giniger, there is no creation of personalized data elements relating to any location.

In response, Appellant's argument filed has been fully considered but is not persuasive. Examiner does not rely on Giniger to teach this limitation. Examiner stated in the rejection that this feature is clearly taught by Dussell (column 7, lines 22-30, column 8, lines 27-40).

(b) The fact that the system of Giniger and the system of Appellant share some components such as the data server, the mobile device, and the communication network does not make the Giniger's reference more relevant against the present invention.

In response, Appellant's argument filed has been fully considered but is not persuasive. Examiner thanks Appellant for agreeing and acknowledging that Giniger and Appellant's system share some components. Because both systems share components, then the Giniger reference would indeed be relevant and applicable. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations *Ex parte Masham*, 2 USPQd 1647 (1987). Giniger discloses Appellant's claimed system.

(c) Even though the system of Dussell and the system of the Appellant have some similarities, the system of the Appellant remains patentably distinct from the system of Dussell since they serve different purposes.

In response, Appellant's argument filed has been fully considered but is not persuasive.

Examiner again thanks Appellant for agreeing and acknowledging that Dussell and Appellant's system have some similarities. In response to Appellant's argument that the system of the Appellant remains patentably distinct from the system of Dussell since they serve different purposes, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

(d) In the system of Dussell, it is clear that the act of associating a task (i.e. creating the text or auditory description) is not typically done when the user is at the specific location where the task could be effected.

In response, Appellant's argument filed has been fully considered but is not persuasive. In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., the user is at the specific location) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(e) The term bookmark is always associated with a means to store a specific location for future retrieval. A location bookmark is used to identify a specific location not generic locations as disclosed in Dussell.

In response, Appellant's argument filed has been fully considered but is not persuasive. Dussell explicitly teaches receiving geographic location coordinates provided by the location determination unit. Once this location is obtained, Dussell teaches associating the location with a descriptor indicative of that location (column 1, lines 61-65, column 2, lines 19-22, column 8, lines 12-15, 27-30). Giniger is also relied upon for teaching obtaining geographical location information (column 5, lines 12-15, 49-67, column 7, lines 6-8, column 8, lines 15-21, 45-51).

Therefore, Dussell indeed teaches a location bookmark used to identify a specific location.

(f) The Appellant understands that the invention of Dussell generally requires a database, a communication network, and a user device generally comprising means to determine the position of the location and means for creating data elements related to the location. The Appellant also understands that these elements are recited in claims 1 and 25. These components are not used in the same way and are not used for the same purpose.

In response, Appellant's argument filed has been fully considered but is not persuasive.

Examiner thanks Appellant for agreeing and acknowledging that Dussell requires a database, a communication network, and a user device generally comprising means

to determine the position of the location and means for creating data elements related to the location. Examiner further thanks Appellant for agreeing and acknowledging that these elements are recited in claims 1 and 25. In response to Appellant's argument that the system of the Appellant remains patentably distinct from the system of Dussell because they are not used in the same way and they serve different purposes, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

(g) Since both the invention of Dussell and the invention of the Appellant are used for totally different purposes, the Appellant believes that the Dussell reference does not render the system and method of the Appellant obvious, with or without the teaching of Giniger.

In response, Appellant's argument filed has been fully considered but is not persuasive. In response to Appellant's argument that the system of the Appellant remains patentably distinct from the system of Dussell because they serve different purposes, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this Examiner's Answer.

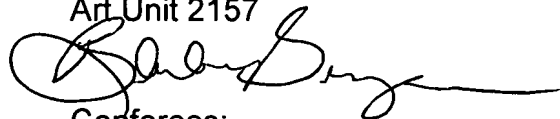
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Barbara Burgess

Examiner

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Conferees:


/Lynne H Browne/

Lynne H Browne

Appeal Practice Specialist, TQAS

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